



August 28, 2006

Daniel M. Sullivan  
Sullivan, Rogers and Company, LLC  
Corporate Place I, Suite 204  
99 South Bedford Street  
Burlington, MA 01803

Re: G.L. Chapter 71, Sections 26A, 26B and 26C  
Fees of Extended School Programs  
Our File No. 2006-220

Dear Mr. Sullivan:

This is in reply to your recent letter requesting our opinion with respect to several issues relating to the fees of an extended day school services program operated under the provisions of G.L. Chapter 71, Sections 26A, 26B and 26C. Under these provisions, a school committee, with the approval of the selectmen in a town, is authorized to offer extended school services, determine a fee to be paid by parents toward the cost of such services and establish a special account for financing the program. This special account, a so-called "revolving fund," is the repository for governmental grants or other monies received from organizations, employers or other individuals, as well as the fees charged to parents for the extended school services. Pursuant to Section 26C, monies in this special fund may be expended by the school committee in support of the program without town meeting appropriation.

You first inquire as to whether there is any limit on the amount of fees that can be charged for enrollment in the program. In this regard, you ask whether the fees are essentially intended to cover the cost of providing the service, or whether the fees may be set so as to generate a surplus or profit. In considering whether an exaction is a fee or an unlawful tax, the Supreme Judicial Court generally observed that fees are charged for a particular governmental service, are paid by choice, and "...the charges are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses." Emerson College v. City of Boston, 391 Mass. 415, 424, 425 (1984). In our view, therefore, the fees or charges for participation in the extended school services program must be calculated and used to offset the overall costs or expenses of providing the service, and not to produce a surplus or profit in excess of the costs of the program.

Your second question asks more specifically what costs should be considered program expenses and be charged to the special fund. In our opinion, the overall "costs" or "expenses" of a program would include all direct and indirect costs associated with the provision of the services or program. As you mention, salaries, employees' benefits, and operational supplies would clearly constitute program costs. Likewise, in our view, custodial, maintenance and utility expenses that are clearly associated with the premises

occupied and used by the program would be appropriate costs of the program, provided the amounts so determined have been reasonably and realistically allocated. Additional information regarding the costing of municipal services may be found in our publication Costing Municipal Services: Workbook and Case Study, which may be found at <http://www.dls.state.ma.us/publics.htm>.

Your next question asks whether any accumulated surplus of an extended day program may be used by the school committee for non-related expenses, i.e., "...to supplant the costs of the regular school operating budget." As it is our view that the nature of user fees or program charges is "compensatory," and they are not intended to serve as a resource for the augmentation of general revenues, it is our opinion that such funds cannot be expended for any non-related purposes. This would be the case whether such non-related expenditures were proposed by the school committee or town meeting. (Question 4) Moreover, this conclusion seems confirmed by the specific language of G.L. Chapter 71, Section 26B that authorizes the school committee to establish fees to be paid by parents "...toward the cost of said services." Accordingly, to the extent that monies have been accumulated in a special Extended School Services revolving fund under Section 26C, the monies remain in the fund to be used by the school committee as necessary and appropriate in support of continuing extended school services.

I hope this information proves helpful.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kathleen Colleary', written in a cursive style.

Kathleen Colleary, Chief  
Bureau of Municipal Finance Law

KC/DJM